

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN THE MATTER OF THE) NO. CV 16-170-CAS(E)
EXTRADITION OF)
LYUBOMIR MIHAILOV YORDANOV,)
aka "Lyubomire M. Iordanov,") MEMORANDUM OPINION AND ORDER:
)
a Fugitive from the) 1. DENYING FUGITIVE'S MOTION TO
Government of Bulgaria,) DISMISS; AND
) 2. CERTIFYING EXTRADITABILITY
)
_____)

BACKGROUND

The Government of Bulgaria has requested the extradition of Lyubomir Mihailov Yordanov, also known as Lyubomire M. Iordanov ("Yordanov"). Yordanov opposes extradition.

On December 15, 2015, the Government of the United States ("Government") filed a sealed "Complaint for Arrest Warrant and Extradition" pursuant to 18 U.S.C. section 3184 in In the Matter of the Extradition of Lyubomir Mihailov Yordanov, aka "Lyubomire M. Iordanov," 15-2388M. Yordanov was arrested in this District on

1 December 18, 2015.

2
3 On January 8, 2016, the Government filed in the present action:
4 (1) a Request for Extradition with exhibits ("Request for
5 Extradition"); and (2) a "Notice to Consolidate" this action with case
6 number 15-2388M. Also on January 8, 2016, the matter was referred to
7 the undersigned Magistrate Judge.

8
9 On July 29, 2016, the Government filed the "United States'
10 Extradition Memorandum" ("Government's Memorandum"). On October 19,
11 2016, Yordanov filed "Mr. Yordanov's Brief in Opposition to
12 Government's Request for Extradition, etc." ("Opposition"). On
13 October 28, 2016, the Government filed the "United States' Reply in
14 Support of Extradition Request, etc." ("Reply"). On November 3, 2016,
15 the Government filed the "United States' Filing of Supplement to
16 Request for Extradition" ("Government's November 3, 2016 Supplement").
17

18 On November 7, 2016, Yordanov filed "Mr. Yordanov's Sur-Reply
19 Brief in Opposition to Government's Request for Extradition and Motion
20 to Dismiss Request for Extradition" ("Sur-Reply and Motion to
21 Dismiss"). On November 9, 2016, the Government filed the "United
22 States' Opposition to Motion to Dismiss Request for Extradition."
23

24 The Magistrate Judge held an extradition hearing on November 10,
25 2016.
26

27 On November 16, 2016, the Government filed the "United States'
28 Filing of Supplement to Request for Extradition, etc." (Government's

1 November 16, 2016 Supplement"). On December 13, 2016, Yordanov filed
2 "Mr. Yordanov's Response to Government's Supplement to Request for
3 Extradition" ("Response to Government's November 16, 2016
4 Supplement").

5

6 **YORDANOV'S MOTION TO DISMISS**

7

8 A criminal charge is pending against Yordanov in the town of
9 Plovdiv, Bulgaria, charging deceit in violation of section 209(1) of
10 the Bulgarian Criminal Code, as amended in 1982 and 1983.

11

12 In support of the Request for Extradition, the Government
13 initially provided the following translation of section 209(1):

14

15 Who, with the purpose of obtaining for himself or for
16 somebody else property benefit [sic], arises or maintains
17 aberration [sic] in somebody, thus causing him or somebody
18 else property damage shall be punished by imprisonment from
19 one to six years.

20

21 Request for Extradition, Government's Exhibit B, ECF Dkt. No. 10-1, p.
22 46. In Yordanov's Opposition, Yordanov's argued that this translation
23 was unintelligible. See Opposition, pp. 5-7. The Government then
24 attached to its Reply a different, unauthenticated translation of the
25 statute. Yordanov thereafter sought to dismiss the proceeding on the
26 grounds that the new translation was untimely and not properly
27 authenticated. See Sur-Reply and Motion to Dismiss, pp. 2-6.

28 ///

1 Following the hearing on November 10, 2016, the Magistrate Judge
2 issued a Minute Order permitting the Government to file a properly
3 authenticated, accurate translation of the statute and authorizing
4 Yordanov to file a response. The Government thereafter filed its
5 November 16, 2016 Supplement to which was attached a copy of a new
6 translation of the statute, a sworn certificate of translation and a
7 cover letter from the director of "International Legal Cooperation and
8 European Affairs" of the Bulgarian Ministry of Justice bearing the
9 seal of the Ministry of Justice. See Government's November 16, 2016
10 Supplement, ECF Dkt. No. 50, Exs. A, B. This translation of section
11 209(1) reads:

12

13 A person who for the purpose of acquiring material
14 benefit for himself or for another evokes or maintains in
15 somebody a misleading idea, and thereby causes material
16 damage to that person or to another, shall be punished for
17 deceit by imprisonment from one to six years.

18

19 Government's November 16, 2016 Supplement, ECF Dkt. No. 50, Ex. A.
20 Yordanov continues to object to the Government's submission of the new
21 translation on procedural grounds. See Response to Government's
22 November 16, 2016 Supplement, ECF Dkt. No. 52, p. 2.

23

24 The Court finds that the new translation has been sufficiently
25 authenticated. See 18 U.S.C. § 3190; Extradition Treaty Between the
26 Government of the United States and the Government of the Republic of
27 Bulgaria, signed at Sofia on September 19, 2007, S. Treaty Doc. No.
28 110-12 (2008) ("Treaty"), Art. 9, Request for Extradition,

1 Government's Ex. A., ECF Dkt. No. 10, p. 37 ("Documents that bear the
2 certificate of seal of the Ministry of Justice, or Ministry of
3 Department responsible for foreign affairs, of the Requesting State
4 shall be admissible in extradition proceedings in the Requested State
5 without further certification, authentication, or other
6 legalization."). The Court also finds that the timing of the
7 presentation and authentication of the new translation is not fatal to
8 the merits of the Request for Extradition. The Treaty does not
9 necessarily require that all documents submitted in support of a
10 request for extradition be submitted at the same time as the request
11 itself. See Treaty, Art. 8, 9, 10, Request for Extradition, Ex. A; 18
12 U.S.C. §§ 3184, 3190. The Motion to Dismiss is denied.

13

FINDINGS AND CONCLUSIONS RE EXTRADITION

15

I. Jurisdiction

17

18 This Court has jurisdiction to conduct extradition proceedings
19 pursuant to 18 U.S.C. section 3184, Local Rule 72-1, and General Order
20 No. 05-07 of the United States Court for the Central District of
21 California. The Court has jurisdiction over Yordanov pursuant to 18
22 U.S.C. section 3184.

23

II. Treaty

25

26 The Treaty is in full force and effect. See Request for
27 Extradition, Government's Ex. A, ECF Dkt. No. 10, pp. 5-48;
28 Declaration of Julie B. Martin, ¶ 3, Government's Exhibit A, ECF Dkt.

1 No. 10, p. 5.

2

3 **III. Identity**

4

5 The Lyubomir Mihailov Yordanov appearing before this Court is the
6 same Lyubomir Mihailov Yordanov sought by the Government of Bulgaria.

7

8 **IV. Request for Extradition; Procedural Requirements**

9

10 The Request for Extradition filed with this Court by the
11 Government of Bulgaria, as augmented by subsequent filings, complies
12 with the procedural requirements of the Treaty.

13

14 **V. Charge**

15

16 The charge of deceit is based on allegations that, from May 2008
17 until August 28, 2008, in the towns of Plovdiv and Krichim, for the
18 purpose of obtaining for himself or another a property benefit,
19 Yordanov allegedly "aroused and sustained deception" in the victim,
20 Yordan Vasilev Angelov, causing property damage "on a large scale" in
21 a sum equivalent to \$640,000. Request for Extradition, Government's

22 ///

23 ///

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1 Ex. B, ECF Dkt. No. 10-1, pp. 24, 33, 42.¹ Yordanov allegedly
2 violated Bulgarian Criminal Code section 209(1), which (as previously
3 indicated) provides:

4

5 A person who for the purpose of acquiring material
6 benefit for himself or for another evokes or maintains in
7 somebody a misleading idea, and thereby causes material
8 damage to that person or to another, shall be punished for
9 deceit by imprisonment from one to six years.

10

11 Government's November 16, 2016 Supplement, ECF Dkt. No. 50, Ex. A.
12 Pursuant to Bulgarian Criminal Code section 210(5), the punishment for
13 "deceit" in Bulgaria is increased to one to eight years if the "caused
14 damage is large in size." Government's Ex. B, ECF Dkt. No. 10-1, p.
15 46.

16

17 **VI. Limited Nature of Present Proceedings**

18

19 In Vo v. Benov, 447 F.3d 1235 (9th Cir.), cert. denied, 549 U.S.
20 935 (2006), the Ninth Circuit emphasized the very limited role of the
21 court in extradition proceedings.

22 ///

23

24 ¹ Although the translation of the Pencheva statement
describes the charge in terms of Yordanov's having "arisen and
25 maintained aberration" in the victim, the translation of various
Bulgarian pretrial orders describe Yordanov as having "aroused
26 and maintained deception" in Angelov. Compare Government's Ex.
B, ECF Dkt. No. 10-1, p. 6 with Government's Ex. B, ECF Dkt. No.
27 10-1 pp. 24 ("Order" dated July 6, 2012), 33 ("Order, etc." dated
June 29, 2012), 42 ("Order for the Opening of Pre-Trial
28 Proceedings," dated April 12, 2010).

1 An extradition court - in this case the magistrate
2 judge-exercises very limited authority in the overall
3 process of extradition. As we have explained,
4 "[e]xtradition is a matter of foreign policy entirely within
5 the discretion of the executive branch, except to the extent
6 that the statute interposes a judicial function."
7 [citations]. Extradition from the United States is
8 initiated when the nation seeking extradition makes a
9 request directly to the State Department. [citation].
10 "After the request has been evaluated by the State
11 Department to determine whether it is within the scope of
12 the relevant extradition treaty, a United States Attorney
13 . . . files a complaint in federal district court seeking an
14 arrest warrant for the person sought to be extradited."
15 [citation]. Upon the filing of a complaint, a judicial
16 officer (typically a magistrate judge) issues a warrant for
17 an individual sought for extradition, provided that an
18 extradition treaty exists between the United States and the
19 country seeking extradition and the crime charged is covered
20 by the treaty. 18 U.S.C. § 3184. After the warrant issues,
21 the judicial officer conducts a hearing to determine whether
22 there is "evidence sufficient to sustain the charge under
23 the provisions of the proper treaty or convention," id., or,
24 in other words, whether there is probable cause.

25
26 Id. at 1237.
27 ///
28 ///

1 Thus, in determining whether the crime is extraditable and
 2 whether probable cause exists, the Magistrate Judge "has no
 3 discretionary decision to make." Prasoprat v. Benov, 421 F.3d 1009,
 4 1012 (9th Cir. 2005), cert. denied, 546 U.S. 1171 (2006) (citation and
 5 internal quotations omitted). "If the judge or magistrate judge
 6 concludes that 'the crime is extraditable,' and that 'there is
 7 probable cause to sustain the charge,' the judge or magistrate judge
 8 must certify the extradition." Manta v. Chertoff, 518 F.3d 1134, 1140
 9 (9th Cir. 2008) (citation omitted). "Once a magistrate judge confirms
 10 that an individual is extraditable, it is the Secretary of State,
 11 representing the executive branch, who determines whether to surrender
 12 the fugitive." Blaxland v. Commonwealth Director of Public
 Prosecutions, 323 F.3d 1198, 1208 (9th Cir. 2003).

14

15 **VII. Evidence**

16

17 **A. Government's Evidence**

18

19 **1. Prosecutor's Statement**

20

21 The Government has submitted a certified translation of an
 22 "Information" statement from Plovdiv Public Prosecutor S. Pencheva
 23 addressed to the Bulgaria Supreme Cassation Prosecutor's Office,
 24 International Legal Cooperation Department (Request for Extradition,
 25 Ex. B, ECF Dkt. No. 10-1, pp. 6-9 ("Pencheva Statement"). This
 26 statement contains the following information:

27 ///

28 ///

1 The victim, Yordan Vasilev Angelov, was the sole owner
2 and manager of "SMM" PLCC, a company engaged in the import
3 and sale of cars and other motor vehicles. Pencheva
4 Statement, ECF Dkt. No. 10-1, p. 6. In February 2008,
5 Angelov met Yordanov through an acquaintance. Id. Yordanov
6 represented that he imported motor vehicles from the U.S.
7 and expressed a desire to develop a common business with
8 Angelov. Id. Yordanov and Angelov entered into an oral
9 agreement for the import of motor vehicles. Id., pp. 6-7.

10
11 Initially, Yordanov performed his obligations under the
12 agreement. Id., p. 7. Yordanov would send invoices to
13 Angelov describing the characteristics of a particular
14 vehicle (i.e., brand, model, VIN number), and Angelov
15 thereafter would transfer the appropriate purchase amount to
16 a United States bank account. Id. Yordanov then would ship
17 the purchased car by container to Bulgaria. Id.

18
19 Commencing in May 2008, Yordanov decided to send
20 Angelov information concerning vehicles which Yordanov did
21 not intend to purchase so as to induce Angelov to transfer
22 money to Yordanov for the allegedly phony purchase. Id.
23 Yordanov intended to use the transferred money for his own
24 necessities. Id. In pursuit of this plan, from May 2008
25 until August 29, 2008, Yordanov sent Angelov invoices for
26 nine vehicles: six BMWs, two Mercedes and an Infinity FX35.
27 Id. Angelov transferred to Yordanov's American bank account
28 a total of \$870,439.43, consisting of \$640,000 in payment

1 for the vehicles plus Yordanov's commission. Id.

2
3 When the vehicles did not arrive in Bulgaria, Angelov
4 repeatedly called Yordanov concerning the reasons for the
5 apparent delay. Id. Initially, Yordanov gave various
6 reasons, and later he sent Angelov several container numbers
7 for the containers in which the cars supposedly were to be
8 loaded. Id. Upon inquiry, Angelov discovered that the
9 numbered containers actually existed "but were not going to
10 sail." Id. Angelov attempted to contact Yordanov, but
11 Yordanov either did not answer the calls or gave various
12 reasons for discontinuing the conversation. Id.

13
14 Angelov then flew to the United States, accompanied by
15 his "best man" Atanas Ivanov Bubarov,² in order to find out
16 why the deliveries had been delayed. Id. Yordanov calmed
17 Angelov down, assuring him that everything was in order and
18 that at any moment the vehicles would depart from a port in
19 New York. Id. When Angelov said he wanted to check
20 personally on the status of the shipment, Yordanov said that
21 this was not possible because of the ship's supposedly
22 imminent departure. Id. After approximately ten days,
23 Angelov returned to Bulgaria to wait for the deliveries.
24

25 ² Documents in the record refer to this witness both as
26 "Bubarov" and "Babarov." See Request for Extradition, Ex. B, ECF
27 Dkt. No. 10-1, p. 7; Government's November 3, 2016 Supplement,
Ex. A, ECF Dkt. No. 43-1, pp. 2-4; Ex. B, ECF Dkt. No. 43-2, pp.
28 2-4. The Court uses the former spelling, which is the spelling
used in the Pencheva Statement.

1 Id. Angelov discovered a couple of days later that the
2 vehicles had not been shipped and that, contrary to
3 Yordanov's representation to Angelov, Yordanov had never
4 even purchased the vehicles. Id., pp. 7-8.

5

6 Bubarov thereafter traveled to the United States at the
7 request of Angelov and met with Yordanov again. Id., p. 8.
8 Yordanov confessed to Bubarov that Yordanov never had
9 purchased the vehicles he had invoiced to Angelov, never had
10 any intention of doing so, had kept the money Angelov had
11 transferred and had spent this money for Yordanov's
12 "personal needs." Id. When Bubarov informed Angelov of
13 this conversation, Angelov contacted the Regional Prosecutor
14 in Plovdiv. Id.

15

16 **2. Witness Statements**

17

18 The Government also has submitted a translated witness statement
19 from Angelov and two translated witness statements from Bubarov.

20

21 **a. Angelov's Statement**

22

23 In Angelov's statement, taken on March 14, 2013, Angelov stated:

24

25 In 2008, Angelov met Yordanov, who told Angelov that
26 Yordanov owned a company named "ID Emerson" in California.
27 Government's November 3, 2016 Supplement, Ex. C, ECF Dkt.
28 No. 43-3, p. 3. The two agreed that Yordanov would buy cars

1 in the United States and ship them to Angelov's company
2 "SMM," in return for which Angelov would send payment to
3 Yordanov's company. Id. Yordanov owned two companies in
4 Bulgaria which would act as brokers to release the cargo
5 from the port in Varna in return for a commission from
6 Angelov. Id.

7
8 Angelov ordered approximately 20-30 cars per month, by
9 email, ultimately ordering approximately 100 cars, all in
10 the upper price range. Id. Yordanov would send invoices by
11 email, after which Angelov would transfer the money for the
12 invoiced cars to Yordanov's company bank account. Id.
13 Yordanov did not buy the cars with his own funds, but with
14 Angelov's money. Id.

15
16 Yordanov invoiced Angelov for the nine subject cars,
17 and Angelov paid Yordanov for these cars. Id. pp. 3-4.
18 When the cars did not arrive, Angelov spoke to Yordanov on
19 the phone. Id., p. 4. Yordanov deceived Angelov, saying
20 that Yordanov needed time to obtain the vehicle documents
21 and that the procedure would take a month and a half. Id.
22 After waiting approximately a month, Angelov notified
23 Yordanov that Angelov was going to come to the United
24 States. Id.

25
26 Angelov traveled to the United States with Bubarov in
27 September or October of 2008. Yordanov told Angelov that
28 Yordanov had bought the nine cars in New York and the cars

1 were there in containers. Id. When Angelov expressed a
2 desire to fly to New York to see the cars, Yordanov said
3 Angelov could not do so because the cars were loaded in
4 containers. Id. Yordanov gave Angelov the numbers of two
5 of the containers which Yordanov said contained eight cars.
6 Yordanov said he had made a down payment for one car which
7 would be shipped in two weeks. Id. Angelov checked the
8 shipping company's website and saw two containers
9 corresponding to the numbers Yordanov had provided. Id.
10 However, a check a week later showed those containers were
11 cancelled. Id.

12
13 Angelov contacted Yordanov, who said he would check
14 what was happening. Id. Angelov sent Bubarov to the United
15 States. Id. Yordanov told Bubarov that Yordanov had not
16 bought the cars but had used the money for his own purposes.
17 Id. Angelov had sent Yordanov \$640,000 for the missing
18 shipments. Id. Later, Yordanov told Angelov that Yordanov
19 would pay Angelov back within six to twelve months. Id.
20 Yordanov's mother, who is in the United States, sent Angelov
21 \$2000. Id.

22
23 **b. Bubarov's Statements**

24
25 In Bubarov's first statement, taken on April 30, 2010, Bubarov
26 stated:

27 ///
28 ///

1 Bubarov, Angelov's "best man," shares an office with
2 Angelov and helps Angelov, an arrangement which ensures that
3 Bubarov is familiar with everything that happens in
4 Angelov's office. Government's November 3, 2016 Supplement,
5 Ex. A, ECF Dkt. No. 43-1, p. 3. In early 2008, an
6 acquaintance introduced Angelov to Yordanov. Id. Bubarov
7 later met Yordanov and learned that Yordanov was living and
8 working in the United States and had offered to start a
9 business with Angelov importing vehicles from the United
10 States. Id. As far as Bubarov knew, Yordanov would send an
11 invoice for a certain car, with the chassis number, and
12 Angelov then would make a bank transfer based on the
13 invoice. Id. Bubarov had the impression that the business
14 was going well. Id.

15
16 However, eventually there was a significant delay in
17 shipping a number of expensive cars. Id. Bubarov
18 accompanied Angelov to the United States because Bubarov
19 spoke English quite well. Id. In the United States, the
20 two met Yordanov, who assured them that everything was all
21 right and that the cars were in stock but that there were
22 some technical problems which were going to be resolved
23 soon. Id., pp. 3-4. Bubarov and Angelov spent
24 approximately a week in Los Angeles but never saw the cars,
25 which reportedly were being kept at the New York harbor
26 Id., p. 4. Yordanov persuaded Bubarov and Angelov not to go
27 to New York. Id.

28 ///

1 Bubarov and Angelov returned to Bulgaria but the cars
2 never left the United States. Id. Bubarov then returned to
3 the United States at Angelov's request and met again with
4 Yordanov. Id. When Bubarov asked Yordanov about the cars,
5 Yordanov said he had never bought the cars, but then gave no
6 explanation concerning the money Angelov had sent Yordanov
7 to purchase the cars. Id. Yordanov began speaking
8 evasively, promising to return the money he owed. Id.
9 Bubarov asked Yordanov why Yordanov had issued invoices for
10 cars Yordanov did not own. Id. Yordanov initially said he
11 had paid certain amounts for some of the cars but nothing
12 for others, but finally admitted that he had not paid any
13 money but had only called the car owners. Id. Yordanov
14 obviously had obtained information about the cars from
15 Internet advertisements. Id.

16
17 Bubarov returned to Bulgaria. Id. Thereafter, Angelov
18 received a few emails from Yordanov promising to return the
19 money. Id. Bubarov read some of these emails personally.
20 Id.

21
22 In Bubarov's second statement, taken on March 14, 2013, Bubarov
23 added:

24
25 After the subject vehicles did not arrive, Bubarov and
26 Angelov went to Los Angeles and discussed with Yordanov the
27 fact that vehicles were not arriving. Government's
28 November 3, 2016 Supplement, Ex. B, ECF Dkt. No. 43-2, p. 3.

1 The two also saw Yordanov's mother, an accountant. Id.
2 Yordanov confirmed the receipt of money from Angelov for the
3 nine vehicles in question. Id. Yordanov said the banks
4 were holding the vehicles' documents for some reason, and
5 said the vehicles were in containers in New York waiting to
6 be loaded. Id. Angelov and Bubarov asked to see the
7 documents and the money, but Yordanov said all documents had
8 gone with the vehicles. Id. Angelov and Bubarov did not go
9 to New York because Yordanov said that the vehicles were in
10 the duty-free zone and could arrive any time. Id. Yordanov
11 provided the numbers of two or three of the containers. Id.
12 Bubarov and Angelov checked the numbers on the shipping
13 company's website and saw that the containers were
14 certified, but after two days the certifications were
15 withdrawn. Id. Bubarov and Angelov "started to suspect
16 that something else was going on." Id.

17
18 Back in Bulgaria, Bubarov and Angelov waited three
19 weeks, but no shipments arrived. Id., p. 4. Bubarov then
20 returned to Los Angeles, where Yordanov said that he had
21 made a down payment but did not own the nine vehicles. Id.
22 Yordanov said he had to make some payments but would get the
23 cars anyway. Id. Yordanov then sent an email saying that
24 he had not acquired the cars, and that he was going to
25 refund Angelov's money, somehow, by the end of the year.
26 Id. The only payment of which Bubarov is aware is a \$2000
27 payment Yordanov's mother sent to Angelov. Id.

28 ///

1 **B. Yordanov's Evidence**

2

3 Yordanov has submitted an untranslated letter accompanied by
 4 documents purporting to reflect completed vehicle purchase and
 5 delivery transactions between Yordanov's company and Angelov's company
 6 in 2008, including a bill of lading dated August 12, 2008 (see
 7 Opposition, Ex. A, ECF Dkt. No. 39-1).

8

9 **C. Admissibility Issues**

10

11 Yordanov challenges the admissibility of the Pencheva Statement
 12 on the ground that the statement appears to be unsworn and contains
 13 hearsay. However, the Treaty does not require that evidence be sworn.
 14 See Treaty, Art. 8, Request for Extradition, Government's Exhibit A,,
 15 ECF Dkt. No. 10, p. 35.³ Furthermore, "[t]he usual rules of evidence
 16 do not apply in extradition hearings and, unless the relevant treaty
 17 provides otherwise, the only requirement for evidence is that it has
 18 been authenticated." Manta v. Chertoff, 518 F.3d 1134, 1146-47 (9th
 19 Cir. 2008) (noting "our well-established case law that evidence
 20 offered for extradition purposes need not be made under oath")
 21 (citation omitted); see also Barapind v. Enomoto, 400 F.3d 744, 748
 22 (9th Cir. 2005); Oen Yin-Choy v. Robinson, 858 F.2d 1400, 1406 (9th
 23 Cir. 1988), cert. denied, 492 U.S. 927 (1989); see generally Collins
 24 v. Loisel, 259 U.S. 309, 317 (1922) (unsworn statements of absent

25

26 ³ Thus, the present case is to be distinguished from In
re Extradition of Platko, 213 F. Supp. 2d 1229, 1237-38 (S.D.
 27 Cal. 2002) in which the applicable treaty (with the Czech
 28 Republic) expressly required "depositions," i.e., statements
 "made under oath."

1 witnesses admissible, "although they could not have been received
 2 . . . under the law of the state on a preliminary examination");
 3 accord In re Extradition of Luna-Ruiz, 2014 WL 1089134, at *4 (C.D.
 4 Cal. Mar. 19, 2014).

5

6 Yordanov's hearsay objection also lacks merit. "[I]t is well-settled in this circuit that evidence is not incompetent simply
 7 because it is hearsay." Mainero v. Gregg, 164 F.3d 1199, 1206 (9th
 8 Cir. 1999) (citation omitted); In re Extradition of Luna-Ruiz, 2014 WL
 9 1089134, at *4 ("The extradition judge may consider hearsay evidence,
 10 unsigned translations of a witness's statements, unsworn statements of
 11 absent witnesses, and summaries by the police or prosecutor of a
 12 witness's testimony or statement, provided that those documents are
 13 properly authenticated and . . . the governing extradition treaty does
 14 not require that a witness's statements be executed under oath.")
 15 (citations omitted).

17

18 Yordanov also contends the evidence of Yordanov's alleged
 19 statement to Bubarov that Yordanov had not bought the vehicles, had no
 20 intention to do so and intended to use the money for his personal
 21 needs assertedly is unreliable because there allegedly is no
 22 indication when this purported conversation occurred. However, the
 23 Government's evidence sufficiently shows the timeline of events. The
 24 Government's evidence shows that the alleged conversation purportedly
 25 occurred during Bubarov's second visit to the United States, which
 26 assertedly occurred approximately three weeks after Bubarov and
 27 Angelov returned from the initial visit to the United States in
 28 September or October of 2008. See Government's November 3, 2016

1 Supplement; Ex. B, ECF Dkt. No. 43-2, p. 4; Ex. C, ECF Dkt. No. 43-3,
 2 p. 4.

3

4 The Government objects to Yordanov's evidence (Reply, ECK Dkt.
 5 No. 42, pp. 21-23). In extradition proceedings, "evidence that
 6 explains away or completely obliterates probable cause is the only
 7 [defense] evidence admissible at an extradition hearing, whereas
 8 evidence that merely controverts the existence of probable cause, or
 9 raises a defense, is not admissible." Barapind v. Enomoto, 400 F.3d
 10 at 749 (citation and quotations omitted); see also Santos v. Thomas,
 11 830 F.3d 987, 992-93 (9th Cir. 2016) (en banc). An extradition court
 12 generally does not weigh conflicting evidence and make factual
 13 determinations, but determines only whether there is competent
 14 evidence to support the belief that the accused committed the charged
 15 offense. Barapind v Enomoto, 400 F.3d at 749; Quinn v. Robinson, 783
 16 F.2d 776, 815 (9th Cir.), cert. denied, 479 U.S. 882 (1986).

17

18 The distinction between "explanatory" and "contradictory"
 19 evidence "is easier stated than applied." Santos v. Thomas, 830 F.3d
 20 at 992. Here, the Government's evidence itself suggests a course of
 21 performance indicating that Yordanov shipped some cars to Angelov
 22 pursuant to invoice(s) during the period from May to August 2008. See
 23 Government's November 3, 2016 Supplement, Ex. C, ECF Dkt. No. 43-3, p.
 24 3 (Angelov's statement indicating he allegedly imported approximately
 25 100 cars during this time period). Under these circumstances, the
 26 Court has considered Yordanov's "course of performance" evidence and,
 27 as discussed herein, the Court nevertheless has decided to certify
 28 extraditability. Accordingly, the Court need not and does not

1 adjudicate the merits of the Government's evidentiary objection.

2

3 **VIII. Extraditability**

4

5 **A. Dual Criminality**

6

7 "Under the principle of 'dual criminality,' no offense is
 8 extraditable unless it is criminal in both countries." In the Matter
 9 of the Extradition of Russell, 789 F.2d 801, 803 (9th Cir. 1986)
 10 (citation omitted). "Dual criminality exists if the 'essential
 11 character' of the acts criminalized by the laws of each country are
 12 the same and the laws are 'substantially analogous.'" Manta v.
 13 Chertoff, 518 F.3d at 1141. The scope of liability need not be the
 14 same. Id. In determining whether dual criminality exists, the Court
 15 must consider "the totality of the conduct alleged." Man-Seok Choe v.
 16 Torres, 525 F.3d 733, 737 (9th Cir. 2008), cert. denied, 555 U.S. 1139
 17 (2009) (citation and internal quotations omitted). Neither the names
 18 nor the elements of the offenses need be identical. Id.; Manta v.
 19 Chertoff, 518 F.3d at 1141; Emami v. United States District Court for
 20 the Northern District of California, 834 F.2d 1444, 1450 (9th Cir.
 21 1987) (dual criminality exists if the "substantive conduct each
 22 statute punishes is functionally identical"). "When the laws of both
 23 the requesting and the requested party appear to be directed to the
 24 same basic evil, the statutes are substantially analogous." Man-Seok
 25 Choe v. Torres, 525 F.3d at 738.

26

27 The Treaty expressly incorporates these principles. The Treaty
 28 defines an "extraditable offense" as an offense punishable under the

1 laws in both States by the deprivation of liberty for a maximum period
2 of more than a year or by a more severe penalty. Treaty, Art. 2(1);
3 ECF Dkt. No. 10-1, pp. 30. An offense is extraditable "regardless of
4 whether the offense is one for which United States federal law
5 requires the showing of such matters as interstate transportation, or
6 the use of the mails or of other facilities affecting interstate or
7 foreign commerce, such matters being merely for the purpose of
8 establishing jurisdiction in a United States federal court. . . ."
9 Id., Art 2(3) (b).

10
11 The Government contends that the dual criminality requirement is
12 satisfied because the Bulgarian offense assertedly is analogous to the
13 California crime of grand theft set forth in California Penal Code
14 section 487(a) and to the federal crime of wire fraud set forth in 18
15 U.S.C. section 1343.

16
17 Yordanov advances several arguments against a finding of dual
18 criminality. Yordanov challenges the alleged extraterritorial reach
19 of Bulgaria's jurisdiction, contending he was not in Bulgaria at any
20 relevant time (Opposition, ECF Dkt. No. 39, p. 14). According to
21 Yordanov, dual criminality is absent because the Government assertedly
22 has not shown that either California's theft statute or the federal
23 wire fraud statute has extraterritorial application (id., pp. 14-15).
24 Yordanov further contends that the dual criminality requirement is not
25 satisfied because the new translation of Bulgarian Criminal Code
26 section 209(1) assertedly is vague, the statute allegedly does not
27 contain a falsity or reliance element, and the evidence assertedly
28 does not show fraudulent intent or use of the wires (see id., pp. 12-

1 || 13; Dkt. No. 42, pp. 8-10).

2

3 || **1. Extraterritorial Jurisdiction**

4

5 || The United States extradition statute provides that a warrant of
6 apprehension may issue upon a verified complaint charging the fugitive
7 "with having committed [crimes] within the jurisdiction of any such
8 foreign government. . . ." 18 U.S.C. § 3143. The Treaty provides:

9

10 || If the offense has been committed outside the territory of
11 the Requesting State, extradition shall be granted, subject
12 to the other applicable requirements for extradition, if the
13 laws of the Requested State provide for the punishment of an
14 offense committed outside its territory in similar
15 circumstances. If the laws of the Requested State do not
16 provide for the punishment of an offense committed outside
17 its territory in similar circumstances, the executive
18 authority of the Requested State, at its discretion, may
19 grant extradition provided that all other applicable
20 requirements for extradition are met.

21

22 || Treaty, Art 2(4).

23

24 || Yordanov contends that extradition is inappropriate because he
25 allegedly did not commit any crime within the jurisdiction of
26 Bulgaria, and because the Government assertedly has not shown that
27 either California's theft statute or the federal wire fraud statute
28 provides "for the punishment of an offense committed outside United

1 States territory in similar circumstances."

2

3 These contentions fail for several reasons. First, it is "not
4 mandatory" that this Court decide the issue of whether Bulgaria would
5 have jurisdiction over Yordanov. See Melia v. United States, 667 F.2d
6 300, 303 (2d Cir. 1981). Nothing suggests that Yordanov will lack the
7 opportunity to challenge jurisdiction in the Bulgarian courts.

8

9 Second, contrary to Yordanov's apparent argument, United States
10 courts have territorial jurisdiction over frauds committed by persons
11 outside the United States which cause harm within the United States.

12 In Ex Parte Hammond, 59 F.2d 683 (9th Cir.), cert. denied, 267 U.S.
13 640 (1932), an extradition case, the Ninth Circuit held that the crime
14 of obtaining funds by fraudulent misrepresentation is committed at the
15 place where the victim parts with the victim's money. There, the
16 fugitive argued that he had made the allegedly false statements to the
17 Canadian victim in Chicago, and that he had not obtained any money by
18 false pretenses until the money was deposited into the fugitive's
19 California bank. The Ninth Circuit rejected these arguments, citing
20 Ford v. United States, 273 U.S. 593, 620-21 (1927) ("(a)cts done
21 outside a jurisdiction, but intended to produce and producing
22 detrimental effects within it, justify a State in punishing the cause
23 of the harm as if he had been present at the effect, if the State
24 should succeed in getting him within its power"). Ex Parte Hammond,
25 59 F.2d at 685-86; see also Case Note, 68 Harv. L. Rev. 1463, 1466
26 (1955) (in extradition contexts, "it has been uniformly held that the
27 court of the place where the victims received the fraudulent
28 communications and parted with the property has territorial

1 jurisdiction") (citations omitted); People v. Cummings, 123 Cal. 269,
 2 272, 55 P. 898 (1899) (venue proper in county where defendant's
 3 fraudulent representations made in another county "had final effect
 4 and the offense became complete"); People v. Chapman, 55 Cal. App.
 5 192, 196, 203 P. 126 (1921) ("Without doubt, the crime of obtaining
 6 money or property by false pretenses is consummated at the place where
 7 the money or property is obtained from the defrauded person,
 8 regardless of where the false pretenses may have been made, and
 9 therefore the place where the money or property is obtained is the
 10 place where, ordinarily, the venue should be laid.") (citations
 11 omitted; quoted in Ex Parte Hammond, 59 F.2d at 686); see generally
 12 People v. Betts, 34 Cal. 4th 1039, 1046, 23 Cal. Rptr. 3d 138, 103
 13 P.3d 883 (2005) ("a state may exercise jurisdiction over criminal acts
 14 that take place outside of the state if the results of the crime are
 15 intended to, and do, cause harm within the state") (citations
 16 omitted); Hageseth v. Superior Court, 150 Cal. App. 4th 1399, 1414, 59
 17 Cal. Rptr. 3d 385, cert. denied, 545 U.S. 1133 (2005) ("it is not
 18 necessary to the 'detrimental effect' theory of extraterritorial
 19 jurisdiction that the defendant be physically present in this state
 20 during some portion of the time during which his alleged criminal act
 21 took place. . . .") (citations omitted).

22

23 Here, the Government's evidence indicates that, although Yordanov
 24 was in the United States, Yordanov assertedly caused Angelov to part
 25 with Angelov's money in Bulgaria. Additionally, the evidence shows
 26 that Yordanov used two of his Bulgarian companies to act as brokers,
 27 assertedly in furtherance of the fraudulent scheme. United States law
 28 would punish a fraud committed in similar circumstances. See United

1 | States v. Kazzaz, 592 Fed. App'x 553, 554-55 (9th Cir. 2014), cert.
 2 | denied, 135 S. Ct. 2388 (2015) (sending checks and transmitting an
 3 | electronic payment to United States established sufficient nexus to
 4 | support domestic jurisdiction over mail and wire fraud charges;
 5 | declining to reach issue of extraterritorial application); accord
 6 | People v. Cummings, 123 Cal. at 272; People v. Chapman, 55 Cal. App.
 7 | at 196.

8

9 Third, even assuming arguendo that United States law does not
 10 provide for the punishment of an offense committed outside United
 11 States territory in "similar circumstances," Yordanov's arguments
 12 nevertheless would fail. The second sentence of the
 13 extraterritoriality provision of the Treaty quoted above provides that
 14 the executive authority of the Requested State has the discretion to
 15 grant extradition even where "the laws of the Requested State do not
 16 provide for the punishment of an offense committed outside its
 17 territory in similar circumstances." Thus, the fact (if it is a fact)
 18 "[t]hat the offense charged is not a crime in the United States is not
 19 necessarily a bar to extradition." Matter of Assarsson, 687 F.2d
 20 1157, 1164-65 (8th Cir. 1982) ("The plain language of this treaty
 21 indicates that the executive has discretion to extradite for
 22 extraterritorial offenses.") (citations and footnote omitted); Matter
 23 of Assarsson, 635 F.2d 1237 (7th Cir. 1980) (same), cert. denied, 451
 24 U.S. 938 (1981). The determination whether to exercise discretion to
 25 extradite for an extraterritorial offense is vested in the Executive
 26 (i.e., the Secretary of State), not this Court. See Matter of
 27 Assarsson, 687 F.2d at 1164; Matter of Assarsson, 635 F.2d at 1245;
 28 see also Vo v. Benov, 447 F.3d 1235, 1247 (9th Cir.), cert. denied,

1 549 U.S. 935 (2006) ("discretionary decisions are within the province
 2 of the Secretary of State and not the extradition magistrate")
 3 (citation and internal quotations omitted).

4

5 **2. Grand Theft Under California Law**

6

7 California's theft statute provides that "[e]very person who
 8 shall feloniously steal, take, carry, lead, or drive away the personal
 9 property of another, . . . or who shall knowingly and designedly, by
 10 any false or fraudulent representation or pretense, defraud any other
 11 person of money, labor or real or personal property, . . . is guilty
 12 of theft." Cal. Penal Code § 484(a). With exceptions not relevant
 13 here, California Penal Code section 487(a) defines grand theft as
 14 theft where the value of the property taken exceeds \$950. Promissory
 15 fraud, i.e., the making of a promise without the intent to perform, is
 16 the equivalent of grand theft by false pretenses. See People v.
 17 Weitz, 42 Cal. 2d 338, 343, 267 P.2d 295 (1954), cert. denied, 347
 18 U.S. 993 (1954) ("a promise made with intent not to perform it is a
 19 'false or fraudulent representation or pretense' within the meaning of
 20 the [theft] statute") (citation omitted); People v. Ashley, 42 Cal. 2d
 21 246, 262, 267 P.2d 271 (1954) ("a promise made without intention to
 22 perform is a misrepresentation of a state of mind, and thus a
 23 misrepresentation of existing fact, and is a false pretense within the
 24 meaning of section 484 of the Penal Code.") (citations omitted).
 25 "[I]n order to support a conviction in such a case 'it must be shown
 26 that the defendant made a false pretense or a representation with
 27 intent to defraud the owner of his property, and that the owner was in
 28 fact defrauded." Id. at 259 (internal quotations omitted).

1 As indicated above, dual criminality exists if the "substantive
 2 conduct each statute punishes is functionally identical." In Collins
 3 v. Loisel, 259 U.S. 309 (1922), the Government alleged that the
 4 fugitive had obtained a pearl button in India by false pretenses. See
 5 Collins v. Miller, 252 U.S. 364 (1920) (earlier opinion in the same
 6 matter setting forth factual allegations). The fugitive contended
 7 that the transaction was simply a failure to pay a debt. Id. at 366.
 8 On habeas review in the United States Supreme Court, the fugitive
 9 argued that the relevant affidavit charged only "cheating," a crime
 10 purportedly different from theft by false pretenses. Collins v.
 11 Loisel, 259 U.S. at 311. The fugitive argued that proof of "cheating"
 12 required proof of a "promise of future performance which the promisor
 13 does not intend to perform," while proof of "theft by false pretenses"
 14 required proof of a false representation of "things past or present."
 15 Id. (citation omitted). The Supreme Court rejected this argument,
 16 ruling that the offense charged was extraditable because the
 17 "particular act charged [was] criminal in both jurisdictions." Id. at
 18 312.

19
 20 Similarly, the act charged herein, an allegedly false promise to
 21 ship vehicles, is criminal in both Bulgaria and California. The Court
 22 rejects Yordanov's argument that the phrase in the Bulgarian deceit
 23 statute "evokes or maintains in somebody a misleading idea" is
 24 impermissibly vague. See Emami v. United States District Court for
 25 the Northern District of California, 834 F.2d 1444, 1449-50 (9th Cir.
 26 1987) (deeming to be an extraditable offense a charge under a German
 27 statute providing that a person "who damages the property of another
 28 person by producing or maintaining an error through fraudulent

1 misrepresentation or by distortion or suppression of true facts, with
 2 the intent to obtain an illegal pecuniary benefit for himself or a
 3 third person . . ." is guilty of fraud). Yordanov also argues that
 4 section 209(1) appears to reach conduct not covered under United
 5 States statutes, contending that the Bulgarian statute does not appear
 6 to require proof of falsity, reliance or intent to harm. To the
 7 contrary: the statutory phrase "for the purpose of acquiring material
 8 benefit for himself . . . evokes or maintains in somebody a misleading
 9 idea" denotes falsity; the statutory phrase "thereby causes material
 10 damage to that person" denotes reliance; and the combination of these
 11 two statutory phrases effectively denotes intent to harm.

12

13 Yordanov also contends that dual criminality does not exist
 14 because the evidence allegedly does not show he intended to defraud
 15 and harm Angelov (Response, ECF Dkt. No. 52, pp. 8-10). See Manta v.
 16 Chertoff, 518 F.3d 1134, 1142 (9th Cir. 2008) (proper to consider
 17 evidence of intent to defraud "as part of our dual criminality
 18 analysis"). Yordanov argues that the evidence shows only a breach of
 19 contract, i.e., a failure to deliver the cars, coupled with an alleged
 20 promise to return Angelov's money.

21

22 As indicated above, under California law, a promise of future
 23 conduct constitutes fraud if made without a present intent to perform.
 24 See People v. Ashley, 42 Cal. 2d at 263-64; People v. Marghzar, 192
 25 Cal. App. 3d 1129, 1140, 239 Cal. Rptr. 130 (1987). While the mere
 26 failure to perform a promise is not alone sufficient to prove
 27 fraudulent intent, the requisite intent may be inferred from all the
 28 circumstances. See Manta v. Chertoff, 518 F.3d at 1142 (fraudulent

1 intent of extraditee could be shown by circumstantial evidence); Oen
 2 Yin-Choy v. Robinson, 858 F.2d 1400, 1407 (9th Cir. 1988), cert.
 3 denied, 492 U.S. 927 (1989) (extraditee's fraudulent intent could be
 4 inferred from alleged transactions and the results thereof); People
 5 v. Christenberry, 167 Cal. App. 2d 751, 755, 334 P.2d 978 (1959)
 6 (evidence that defendant promised to deliver a car to the victim when
 7 he knew he could not procure the car was sufficient to show fraudulent
 8 intent). Although the evidence suggests that Yordanov initially may
 9 have performed his alleged contractual obligations to ship certain
 10 other vehicles, the Government's evidence also shows that:
 11 (1) Yordanov did not ship nine vehicles for which Angelov had sent
 12 Yordanov money; (2) when Angelov assertedly came to this country to
 13 discuss the missing shipments, Yordanov, knowing he had not purchased
 14 the subject vehicles, allegedly provided continuing, false assurances
 15 of performance; and (3) Yordanov later told Bubarov that Yordanov had
 16 not purchased the subject vehicles and that Yordanov had used the
 17 money obtained from Angelov for Yordanov's own purposes.⁴ Although
 18 Yordanov points to evidence allegedly showing that Yordanov
 19 purportedly later promised to repay Angelov and sent Angelov \$2000,
 20

21 ⁴ Contrary to Yordanov's assertion, the witness
 22 statements do not necessarily contradict the relevant statements
 23 in the Pencheva Statement. As indicated above, the Pencheva
 24 Statement relates that Bubarov said Yordanov told Bubarov that
 25 Yordanov had not purchased the nine vehicles but rather had used
 26 Angelov's money for Yordanov's personal expenses. While
 27 Bubarov's statements do not contain some of this specific
 28 information, Angelov's statement does indicate that Bubarov told
 Angelov that Yordanov had said he used the money "for his own
 purposes." The fact that both Bubarov and Angelov related in
 their statements that Yordanov purportedly promised to pay the
 money back does not contradict the statements that Yordanov told
 Bubarov he had used the money "for his own purposes."

1 the Government's evidence, if credited, could support the inference
 2 that Yordanov made false promises of performance with respect to the
 3 subject vehicles. See People v. Christenberry, 167 Cal. App. 2d at
 4 755; see also People v. Wieger, 100 Cal. 352, 357, 34 P. 826 (1893)
 5 ("Neither the promise to repay, nor the intention to do so, will
 6 deprive the false and fraudulent act in obtaining it of its
 7 criminality. The offense is complete when the property or money has
 8 been obtained by such means, and would not be purged by subsequent
 9 restoration or repayment.") (citations omitted); People v. Silver, 47
 10 Cal. App. 3d 837, 845-46, 121 Cal. Rptr. 153 (1975) (same); United
 11 States v. Treadwell, 593 F.3d 990, 997 (9th Cir.), cert. denied, 562
 12 U.S. 916, 973 (2010) ("While an honest, good-faith belief in the truth
 13 of the misrepresentations may negate intent to defraud, a good-faith
 14 belief that the victim will be repaid and will sustain no loss is no
 15 defense at all.") (citation and internal quotations omitted).

16

17 The Court concludes that Yordanov's alleged acts are criminal in
 18 both Bulgaria and California. As to the remaining issue of
 19 punishment, the Treaty defines an "extraditable offense" to mean an
 20 offense punishable under the laws in both States by deprivation of
 21 liberty for a maximum period of more than a year or by a more severe
 22 penalty. Treaty, Art. 2(1), Request for Extradition, Government's Ex.
 23 A, ECF Dkt. No. 10, p. 30 (emphasis added). In California, the taking
 24 of property of a value exceeding \$950 is grand theft. Cal. Penal Code
 25 § 487(a). The punishment for grand theft in California is
 26 imprisonment in the county jail not exceeding one year, or pursuant to
 27 California Penal Code section 1170(h), or a fine not exceeding \$5000
 28 or both the fine and imprisonment. Cal. Penal Code § 489 (emphasis

1 added).⁵ Section 1170(h), part of California's 2001 Realignment
 2 legislation (inter alia providing for the retention of certain classes
 3 of convicted inmates in jail custody), provides generally that a
 4 felony where the term is not specified in the underlying offense shall
 5 be punishable by a county jail term of 16 months, two or three years,
 6 and otherwise by imprisonment in the county jail for the term
 7 described in the underlying offense. Furthermore, California Penal
 8 Code section 12022.6(a)(2) authorizes a sentence enhancement of two
 9 years for the taking of property in the commission or attempted
 10 commission of a felony where the amount of the loss exceeds \$200,000.
 11 For purposes of the dual criminality requirement, the court may
 12 consider sentence enhancements. See, e.g., Joseph v. Hoover, 254 F.
 13 Supp. 2d 595, 599-600 (D.V.I. 2003). Here, the amount of the alleged
 14 loss substantially exceeds \$200,000. Therefore, the offense of grand
 15 theft in the sum alleged in this case is punishable under the laws of
 16 both Bulgaria and California by deprivation of liberty for a maximum
 17 period of more than a year. Dual criminality is established with
 18 respect to California's theft statute.

19

20 3. Wire Fraud Under Federal Law

21

22 The federal wire fraud statute proscribes obtaining money or
 23 property "by means of false or fraudulent pretenses, representations,
 24 or promises. . . ." See 18 U.S.C. § 1343. The Ninth Circuit has held
 25

26

27 ⁵ Thus, grand theft is a "wobbler" which is a felony at
 28 the time of commission and which remains a felony until
 sentencing. See People v. Valenzuela, 5 Cal. App. 5th 449, 452-
 53, 209 Cal. Rptr. 3d 860 (2016).

1 that, for purposes of the dual criminality requirement, fraud by false
 2 pretenses "is criminal in the United States under laws punishing mail
 3 and wire fraud." Manta v. Chertoff, 518 F.3d at 1141. Contrary to
 4 Yordanov's apparent argument (see Opposition, p. 8), the federal
 5 jurisdictional requirements of use of the mail or electronic
 6 communications do not constitute the essential elements of the fraud
 7 offense, and the absence of these elements in the definition of the
 8 foreign crime does not defeat a finding of dual criminality. See
 9 Emami v. United States District Court for the Northern District of
 10 California, 834 F.2d at 1450; In re Extradition of Mathison, 974 F.
 11 Supp. 2d 1296, 1312-13 (D. Or. 2013). Moreover, as indicated above,
 12 the Treaty expressly provides that an offense is considered an
 13 extraditable offense "regardless of whether the offense is one for
 14 which United States federal law requires the showing of such matters
 15 as interstate transportation, or the use of the mails or of other
 16 facilities affecting interstate or foreign commerce, such matters
 17 being merely for the purpose of establishing jurisdiction in a United
 18 States federal court. . . ." Treaty, Art. 2(3)(b), ECF Dkt. No. 10,
 19 p. 30) (emphasis added). In any event, the evidence shows Angelov
 20 sent money to Yordanov via wire transfers. Finally, the severity of
 21 the punishment for federal wire fraud easily meets the dual
 22 criminality requirement. See 18 U.S.C. § 1343 ("shall be fined under
 23 this title or imprisoned not more than 20 years, or both"). Dual
 24 criminality is established with respect to the federal wire fraud
 25 statute.

26 ///

27 ///

28 ///

1 **4. Conclusion**

2

3 For the foregoing reasons, the Court finds that the charged
4 offense is an extraditable offense under the Treaty and the dual
5 criminality requirement is satisfied.

6

7 **IX. Probable Cause Determination**

8

9 "An extradition proceeding is not a trial; the relevant
10 determination is confined to whether a prima facie case of guilt
11 exists that is sufficient to make it proper to hold the extraditee for
12 trial." Emami v. United States District Court for the Northern
13 District of California, 834 F.2d at 1452. "The function of the
14 committing magistrate is to determine whether there is competent
15 evidence to justify holding the accused to await trial, and not to
16 determine whether the evidence is sufficient to justify a conviction."
17 Collins v. Loisel, 259 U.S. 309, 316 (1922); Barapind v. Enomoto, 400
18 F.3d 744, 752 (9th Cir. 2005) (citation and quotations omitted). An
19 extradition proceeding thus "makes no determination of guilt or
20 innocence," but is "designed only to trigger the start of criminal
21 proceedings against an accused," and "guilt remains to be determined
22 in the courts of the demanding country." Sainez v. Venables, 588 F.3d
23 713, 717 (9th Cir. 2009), cert. denied, 560 U.S. 958 (2010) (citation
24 and internal quotations omitted). The country seeking extradition
25 need not produce all of its evidence, and the Magistrate Judge does
26 not determine whether there exists sufficient evidence to convict.
27 Id. at 717; Quinn v. Robinson, 783 F.2d 776, 815 n.41 (9th Cir.),
28 cert. denied, 479 U.S. 882 (1986) (noting "well-established rule that

1 extradition proceedings are not to be converted into a dress rehearsal
2 for a trial") (citation and internal quotations omitted). "[T]he
3 magistrate's function is to determine whether there is any evidence
4 sufficient to establish reasonable or probable cause." Sainez v.
5 Venables, 588 F.3d at 717 (citation, internal quotations and brackets
6 omitted).

7

8 Yordanov contends the evidence shows nothing more than a business
9 dispute, emphasizing Yordanov's alleged intent to repay Angelov.
10 However, for the reasons discussed above, the evidence establishes
11 probable cause sufficient to support extradition. The evidence that
12 the parties engaged in a course of dealing during which Yordanov
13 shipped some vehicles in return for Angelov's payments does not
14 foreclose a fraud prosecution based on other evidence that Yordanov:
15 promised to purchase and ship the nine subject vehicles; received the
16 money to do so; failed to do so; made false representations that he
17 had done so; made false assurances that the vehicles were in
18 containers in New York ready for shipment; and made false
19 representations that he would see to it that the cars were shipped.
20 Furthermore, there is evidence that Yordanov used Angelov's money for
21 Yordanov's own purposes and then lied about it. Fraudulent intent
22 reasonably may be inferred from the circumstances presented. As
23 indicated above, Yordanov's alleged promise to repay Angelov does not
24 vitiate the evidence of fraud. The credibility of the witnesses
25 against Yordanov presents a matter for trial in Bulgaria because the
26 reasons suggested by Yordanov to doubt the credibility of these
27 witnesses do not "completely obliterate the evidence of probable
28 cause." See Man-Seok Choe v. Torres, 525 F.3d 733, 740 (9th Cir.

1 2008), cert. denied, 555 U.S. 1139 (2009) (witness' alleged lack of
2 credibility was "merely a weakness" in the Government's case, and did
3 not "completely obliterate the evidence of probable cause") (citations
4 and quotations omitted); Barapind v. Enomoto, 400 F.3d at 749-50
5 (same); Shapiro v. Ferrandina, 478 F.2d 894, 905 (2d Cir.), cert.
6 dism'd, 414 U.S. 884 (1973) (evidence bearing on the credibility of a
7 witness' inculpatory statement and on whether the accused actually
8 uttered certain statements was inadmissible in extradition proceeding;
9 that evidence "would in no way 'explain' [or] 'obliterate' . . . the
10 government's evidence, but would only pose a conflict of credibility"
11 which "should properly await trial in Israel.") (Friendly, J.). In
12 making a probable cause determination, the Court does not weigh
13 conflicting evidence and make factual determinations, but determines
14 only whether there is competent evidence to support the belief that
15 the accused committed the charged offense. Quinn v. Robinson, 783
16 F.3d at 815. The Court finds that the evidence before the Court
17 establishes probable cause to believe that Yordanov committed the
18 crime charged against him.

19

20 **ORDERS AND CERTIFICATION**

21

22 The Motion to Dismiss is denied.

23

24 Based on the above findings, and pursuant to 18 U.S.C. section
25 3184, this Court certifies that it has found Lyobomir Mihailov
26 Yordanov extraditable to Bulgaria with respect to the charge pending
27 against him in Bulgaria.

28 ///

A warrant may issue for the surrender of Lyubomir Mihailov Yordanov upon the requisition of the proper authorities of the Government of Bulgaria, according to the terms of the Treaty.

IT IS FURTHER ORDERED that Lyubomir Mihailov Yordanov shall remain committed to the custody of the United States Marshal, to be confined without bail until he is surrendered to the Government of Bulgaria pursuant to the applicable provisions of the Treaty.

IT IS FURTHER ORDERED that the attorney for the United States forthwith shall obtain transcripts of all proceedings before this Court and deliver those transcripts to the Clerk of the Court. The Clerk of the Court shall forward to the Secretary of State a copy of this Order, together with the transcripts and copies of documents on file herein. The Clerk of the Court also shall file herein a copy of the transcripts of all proceedings before this Court.

IT IS SO ORDERED.

DATED: January 18, 2017.

/s/
CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE